IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Crl.Rev.Pet.No. 316 of 2000

CRA.404/1999 OF SESSIONS COURT, THRISSUR
ST.2189/1996 OF JUDL. MAGISTRATE OF FIRST CLASS COURT, IRINJALAKUDA

REVN. PETITIONER/APPELLANT/ACCUSED

P.G. SEBASTIAN,
MARAMBAL HOUSE,
NEAR ST. ANTONY'S CHURCH,
KOCHI- 17.

BY ADV. SRI.C.J.JOY

RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE

1. **LAZAR, S/O. DEVASSY,**
   KOCHERY HOUSE, MANAVALASSERY VILLAGE,
   IRINJALAKUDA.

2. **STATE OF KERALA,**
   REP. BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA.

PUBLIC PROSECUTOR SRI P.N. SANTHOSH
BY ADV. SRI.M.RAMESH CHANDER FOR R1
SRI.M.VIJAYAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP NO. 1910/2000 IN OP NO. 316/2000 B.

DISMISSED

26/09/2007. SD/- J.B.KOSHY, JUDGE.

True copy

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J.B. KOSHY, J.

Crl.R.P. NO. 316 of 2000

Dated this the 26th day of September, 2007

Order

Two cheques were issued by the revision petitioner totaling an amount of Rs.55,340.25. The cheques were dishonoured for insufficiency of funds. Complaint was filed by the first respondent under section 138 of the Negotiable Instruments Act after completing all legal formalities. The complainant was examined as PW1. Exts.P1 and P2 cheques were produced and marked. Exts.P3 and 4 memos were produced to show that the cheques were dishonoured for insufficiency of funds. Postal receipts were produced to show that lawyer notice was sent in time and formalities for filing the complaint under section 138 was complied with. Defence of the accused was that he was an employee of the complainant who was working as a share broker and accused was his authorised assistant. Large amounts were defalcated and these cheques were issued in settlement of the dues. After analysing the evidence the trial court found that the cheques were issued for a legally enforceable debt

and on that basis he was convicted. The above conviction was affirmed by the appellate court also. I see no ground to interfere in the conviction in the revisional jurisdiction. I note that in appeal the matter was remanded as Magistrate's court imposed a fine of Rs.40,000/-. Total amount of the cheque is Rs.55,340/-. According to the appellate court, the magistrate could have imposed a fine of Rs.5,000/- only, but, compensation can be imposed. Therefore, the matter was remanded to the trial court only for imposing appropriate sentence. I am of the opinion that if the sentence was not appropriate or illegal, it is for the appellate court to impose appropriate sentence and for that matter there was no necessity to remand the matter. I have heard both sides regarding awarding of sentence. Awarding of compensation in section 138 case is equivalent to damages imposed in a civil case. I am of the opinion that it is a fit case where the accused can be sentenced for imprisonment for one week and to pay a compensation amount of Rs.40,000/- (which is equivalent to the fine amount imposed by the trial court). The compensation, if realised, shall be paid to the first respondent

complainant. The compensation can be realised as provided under section 431 read with section 421 of the Code of Criminal Procedure. The criminal revision petition is disposed of confirming the conviction and ordering sentence.

J.B.KOSHY
JUDGE

vaa

J.B. KOSHY, J.

Crl.R.P. No.316/2000

Order

Dated:26th September, 2007